IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7913 of 2001
With
SPECIAL CIVIL APPLICATION No. 8141 of 2001
With
SPECIAL CIVIL APPLICATION No. 8144 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE MUNICIPAL COMMISSIONER - Petitioner(s)
Versus
SANJAYKUMAR SAMBHAJIT UPADHYAY & Others- Respondent(s)

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Appearance :

Special Civil Application No. 7913 of 2001:

MR Haresh Trivedi for Petitioner(s) : 1,
MR HARSHAD K PATEL for Respondent(s) : 1,

Special Civil Applications No. 8141 of 2001 & 8144 of 2001:

Mr. Nilesh A. Pandya for petitioner.

Mr. Harshad K. Patel for respondents

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 10/10/2007
ORAL JUDGMENT

These three writ petitions preferred by Vadodara Municipal Corporation [hereinafter referred to as 'the Corporation'] under Articles 226 and 227 of the Constitution of India arise from the judgments and awards dated 11th/21st/23rd October 2000 passed by the Labour Court, Vadodara in Reference (LCV) No. 830/1994, 831/1994 and 832/1994. The facts and the matters at issue in these writ petitions are identical. With the consent of the learned advocates, the petitions are decided by this common judgment.

2. Feeling aggrieved by termination of their service as 'daily attendant' at the gas crematoria, the respondents workmen raised industrial dispute which came to be referred to the Labour Court, Vadodara and registered as above. According to the workmen, they were engaged by the Corporation as 'daily attendant' at various crematoria maintained by the Corporation in the city of Vadodara. Their service as such was continued from 1st April 1993 till 31st May 1994. Since 1st June 1994 their service was discontinued without any rhyme or reason, without

formal order and, without following the due procedure of law. The Reference was contested by the Corporation. The Corporation denied the averments made by the workmen. According to the Corporation by Resolution No. 656 dated 19th November 1992 passed by the Standing Committee, approved by the General Board by Resolution No. 596 dated 12th January 1993, the management of the concerned crematoria was entrusted to one Jalaram Sewashram Trust. It was the said Trust which had engaged the workmen as daily attendant and it was the said Trust which had terminated their service. The claim, if any, the workmen had should be against the said Trust. In other words, the Corporation disowned its liability on the ground that the workmen were not the employees of the Corporation.

3. The Labour Court, by impugned judgments held that the workmen were engaged by the Corporation, they had continuously served since 1st April 1993, and their service was terminated after more than a year of service in June 1994 without following the due procedure. The learned Judge was,

therefore, pleased to allow the References and to direct the Corporation to reinstate the workmen in service and to pay 75% of the backwages. Therefore, the present petitions.

4. Mr. Pandya has assailed the impugned judgment and awards passed by the Labour Court. He has submitted that the workmen were not the employees of the Corporation, nor were they appointed by the Corporation, nor their service was terminated by the Corporation. The awards made against the Corporation are, therefore, ex facie illegal and unsustainable.

5. I am unable to agree with Mr. Pandya. The evidence on record has been produced for my perusal. It cannot be gainsaid that the workmen were the employees of the Corporation. It is true that the Corporation had decided to hand over the management of the crematoria to the aforesaid Trust. However, till the Trust made its own arrangement it was the Corporation which had appointed the workmen as 'daily attendant' at the concerned crematoria. The said appointment though, was temporary for specified time

to facilitate the Trust to make its own arrangement. By several orders made from time to time, the workmen were continued for specified time and the wages were paid by the Corporation. The evidence on record belies the claim of the Corporation that the workmen were not the employees of the Corporation.

6. However, it does appear that as stated hereinabove, the workmen were appointed temporarily for a specified period to facilitate the aforesaid Trust to make its own arrangement. The last such appointment was made for the period upto 31st May 1994. Thus, in my view, the discontinuance of the workman as 'daily-rated attendant' from 1st June 1994 would not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. The discontinuation of the workmen from service on expiry of the period of their appointment would fall within the exception(bb) to the said Clause(oo). The discontinuance of service of the workmen, therefore, cannot be held to be in contravention of the Act or made without following the due procedure of law. In that case, the workmen

would not be entitled to reinstatement in service, or the consequential benefits.

7. Further, from the records it appears that since 1st June 1994 the contract for maintenance of the concerned gas crematoria was entrusted to one Baroda Sanitary Works. The said Baroda Sanitary Works had continued the service of the workmen at the concerned gas crematoria since 1st June 1994. It had paid the workmen wages for the period from 1st June, 1994 to 31st August, 1994. This is borne out from the communications dated 10th November 1994 sent by the said Baroda Sanitary Works to the Corporation.

8. In above view of the matter, though I do not agree with the plea taken by the Corporation, I allow the writ petitions. The impugned judgments and awards passed by the Labour Court, Baroda in Reference (LCV) Nos. 830, 831 and 832 of 1994 are quashed and set aside. The claim made by each workman is rejected. I am of the opinion that the Corporation had wrongly denied that the workmen were

never employed by the Corporation or that their service was not terminated by the Corporation. The Corporation failed to take proper plea and to place the correct facts before the Court below. The Corporation, therefore, shall pay compensation in the sum of Rs. 10,000, and cost of Rs. 5,000 to each workman. The amount of compensation shall be paid within six weeks from today. In the event the Corporation fails to pay compensation as directed hereinabove, the Corporation shall be liable to pay interest at the rate of 1% for delay or every month or a part of the month.

9. Subject to the above direction, Rule is made absolute in each petition. Registry will maintain copy of this judgment in each petition.

[Ms. R.M. Doshit, J.]

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